IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII Rule 32(2) (b)

Description of the case.

W.P. No. 1746 (S/S) of 2001

(Old No. 39625/1993)

Date of decision :- 07/9/06

A.F.R. Approved for reporting

~~Not approved for reporting~~

Date :- 07-9-06 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Writ Petition No. 1746 (S/S) of 2001
(Old No. 39625/1993)

U.P. P.W.D. Employee Union
10, Vidhan Sabha Marg, Lucknow and 35 others ...Petitioners
Versus

The State of Utter Pradesh and 3 others ….. Respondents

Mr. P.C. Jhingan, learned counsel for the petitioners.
Mr. N.P. Sah, learned Standing Counsel for the respondents/State

Per Hon'ble J.C.S. Rawat, J.

1. By means of this Writ Petition, moved under Article 226 of the Constitution of India, the petitioner has sought the following reliefs: -

> i) To issue a writ order or direction in the nature of certiorari for quashing the U.P. Govt. No. 6732/23-4-89/145-NG/88 dated 12th February, 1990 referred to in Annexure-I and the Office Order/letter No. 1000-Vyag-Sha/764-Vyag/82, Lucknow dated 18th September, 1991, (Annexure-I to this writ petition).
>
> ii) To issue any writ, order or direction in the nature of mandamus commanding the respondents to lift the bar of maximum wages at Rs. 1200/-, Rs. 1600/, Rs. 1800/- and Rs. 2200/- in the various pay scales referred to in the letter/Office Order dated 18th September, 1991 (Annexure-I to this writ petition).
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> iii) To issue any other suitable writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.
>
> iv) To award the cost of the writ petition to the petitioners."

2. The petitioners has been working on different dates. The Government Order dated 12th February, 1990 which is referred in the letter dated 18th September, 1991 in which the maximum limit of total wages including dearness allowance have been fixed to Rs. 1200/- of those employees whose scale of pay is Rs. 750-12-870-EB-14-940 and Rs. 775-12-995-EE-14-1025, Rs. 1600/- maximum is fixed for pay scales

of Rs. 825-15-900-EB-20-1200 and Rs. 950-20-1150-EB-25-1500 and Rs. 1800/- maximum is fixed for the pay scale of Rs. 975-25-1150-EB-30-1660 and Rs. 1400-40-1800-EB-50-2300 and Rs. 2200/- is fixed as maximum limit for the pay scale of Rs. 1600-50-2300-EB-60-2600. The petitioners had challenged that the said government order as well as the letter dated 12th September, 1991 are hit by article 14 of the Constitution. It was further pleaded that the enhancement of the dearness allowance, wages and the wage revision was the result of the recommendation of the 4th Pay Commission. which should have been implemented in full and the petitioners would have been given the same pay scale as has been recommended by the 4th Pay Commission. The respondents had freezed their pay scale to a fixed amount whereas the other regular and permanent employees and their counter parts in the department are getting the pay scale recommended by the 4th Pay Commission and the petitioners are deprived of the pay scale recommended by the 4th Pay Commission. The petitioners are deprived of the pay scale which had already been given to the regular and permanent employees of the department. It was further pleaded that it is discriminatory, unconstitutional and also against the doctrine of equal pay for the equal work. The representations were made to the respondents but the respondents did not pay them the pay scale as recommended by the 4th Pay Commission. Hence this writ petition has been preferred.

3. Heard Sri P.C. Jhingan, learned counsel for the petitioners on admission, Sri N.P. Sah, learned Standing Counsel for the respondents and perused the record.

4. It was contended that on behalf of the learned counsel for the petitioners that that the petitioners had been working since long as work charge employees and the 4th Pay Commission had enhanced the pay of the regular and permanent employees of the respondents. The respondents had been taking the same work from the petitioners which they are taking from regular employees. But the respondents had freezed maximum emoluments up to the extent as indicated above. It was further contended that this discrimination is against the constitutional scheme and against the doctrine of equal pay for the equal work. The learned Standing Counsel refuted the contention. It is admitted that the petitioners had been working as a work charge employee and they are not the regular and permanent employee of the respondents. They are working either on the daily wager or on ad hoc basis. It has been held in **Secretary, State of Karnataka & others Vs. Umadevi & Others** reported in **2006 AIR SCW p/1991** that if any persons had been appointed on the daily wages, casual wages or on ad hoc appointment, they cannot claim to be permanent on the expiry of his term of appointment. The Hon'ble Apex Court have also clarified that merely because of a temporary employee or a casual wage worker or ad hoc employees had been continuously working for long time, he cannot be absorbed in the regular service and he cannot claim to be regularized. It has been held in the case of Umadevi (supra) at para 39 and 41 as follows :

> *"39. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or*

salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Article 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled."

40. ……

41. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles, 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The

acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality."

5. Thus it is apparent from the record that the petitioners are working as work charge employees and they are not the regular employees of the department and they are working on the daily wagers. Thus the employees who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. As such, no right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited persons and made permanent in the employment even assuming that the principle could be invoked for claiming equal wages for equal work. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. The government was justified in issuing the order to fix an amount as a wages to the work charge employees. It has been notified that the government had time to time revised the wages of the daily wagers keeping in mind the inflation prevalent in the society.

When any person is appointed as daily wager or ad hoc employee, he knows the nature of his appointment and the wages he would get after his engagement. He accepts the employment knowing the consequence of the employment. He also knows that he had been appointed by the appointing authority without any process being undertaken for selection and he had deprived a number of persons who were aspirant of the employment. He very well knows that he had got the employment with the sympathy of the appointing authority. Thus, he would be ready to face the consequences of the employment which he had received in relaxation of the authorities and behind the back of constitutional scheme. Thus such, employees whose induction in the service is itself against the constitutional scheme, create a class itself and they cannot claim parity with the duly appointed employees under the constitutional scheme. Thus the arguments based on the Article 14 and 16 of the Constitution as advanced by the learned counsel for the petitioners are thereof overruled.

6. In view of the foregoing discussion, this writ petition devoids of merit is liable to be dismissed and is dismissed accordingly. Cost easy.

7. All applications pending in this case are stand disposed of in terms of the judgment.

(J.C.S.Rawat, J.)

07th September, 2006
Shiv